TAN CHENG SENG & ANOR. v. REX.

[App. Cr. Juris. (Murray-Aynsley, C.J. Singapore, Pretheroe, Ag. C.J., M.U. and Brown, J.) Dec. 19, 1947]
[Singapore — Cr. App. No. 87 of 1947]

Where one prisoner gives evidence implicating co-prisoner — Accomplice — Corroboration.

Where prisoners are tried jointly, and one of them gives evidence on his own behalf incriminating a co-prisoner, the prisoner who has given the incriminating evidence is not placed in the position of an accomplice, nor does the rule of practice with regard to the corroboration of an accomplice apply to such a case. The rule applies only to witnesses called for the prosecution.

Case referred to :—

(1) *R. v. Barnes & Richards*, 27, Cr. App. R. 154.

COURT OF CRIMINAL APPEAL.

Osborne-Jones for 1st Appellant.

Johnson for 2nd Appellant.

Lim Koon Teck (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — This appeal was dismissed at the conclusion of the hearing.

The Court only considers it necessary to call attention to one point. At the hearing one of several co-accused gave evidence on his own behalf which gravely implicated another of the co-accused. It was contended on behalf of the latter that this evidence should have been treated as evidence of an accomplice, and required the same degree of corroboration.

In English cases, in particular *R. v. Barnes & Richards*[1], it has been held on several occasions that it is not so and we consider that these cases are applicable in this Colony.

Appeal Dismissed.

SYED JAFFAR v. REX.

[App. Crim. Juris. (Brown, J.) January 16, 1948]
[Singapore — Magistrate's Appeal No. 156 of 1947]

Evidence of accomplices — Corroboration — Corroboration must be independent evidence implicating the accused.

In this case the accused was charged with abetting the offence of criminal breach of trust of 21 bales of cloth the property of the Military. The only direct evidence that the accused committed the offence was the evidence of an accomplice. The learned District Judge said that he was not prepared to convict on the evidence of the accomplice in the absence of corroboration. He relied however on the report by the accused of a bogus robbery and on the fact that the accomplice on hearing of the report surrendered himself to the Police. One witness, Kassim, also gave evidence but the learned District Judge said that he did not regard his evidence as conclusive.

Held, (1) that the learned District Judge had misdirected himself in relying upon matters as affording corroboration which were not independent testimony implicating the accused and were not corroboration; (2) that though the evidence of Kassim afforded corroboration, if conclusively believed, the learned District Judge had not found that evidence to be conclusive and had not adequately considered it; (3) that as there was therefore no adequate corroboration of the evidence of the accomplice, the conviction of the accused must be quashed.

Cases referred to :—

(1) *Rex v. Lim Yam Hong*, 14 S.S.L.R. 152.

(2) *Rex v. Baskerville*, [1916] 1 K.B. 667.

MAGISTRATE'S APPEAL.

S. C. Goho for the Appellant.

M. Buttrose for the Respondent.

Cur. Adv. Vult.

Brown, J. : — This is an appeal against the conviction and sentence by the 2nd District Judge upon a charge of abetting the offence of criminal breach of trust in the theft of 21 bales of cloth the property of the military.

The only direct evidence that the appellant committed the offence was the evidence of Cherubal Shanker (P.W.7), who was an accomplice. He described how the appellant came to his house on the 14th of January and put the proposal to him that with the co-operation of a military driver the offence should be committed, and how, after further meetings, he and the appellant assisted in carrying out the theft on the 16th of January, which resulted in the appellant being paid $6,500. He described how the appellant had avoided paying him any part of the money, and when on the morning of the 21st of January he went to the appellant's house in the hope of getting the money he heard that the appellant had made a bogus charge of robbery against him, which caused him to surrender himself at Orchard Road Police Station.

The learned District Judge clearly appreciated the fact that the case against the appellant depended upon the evidence of the accomplice, and it is clear from his judgment that he had in mind the danger of convicting on the uncorroborated evidence of an accomplice. *Rex v. Lim Yam Hong*[1] is authority for the proposition that an appeal court will not always set aside a conviction based on the uncorroborated evidence of an accomplice if it is clear from the grounds of judgment that the Court below, being fully alive to the danger of convicting, was nevertheless so convinced of the truth of the accomplice's story that in

the face of that danger it convicted in the absence of corroboration. Such cases are however exceptional.

But that is not this case. Here the learned District Judge was not prepared to convict upon the uncorroborated evidence of the accomplice. He first weighs the accomplice's evidence in the scales. On the one hand he was "impressed by the frank and candid manner in which he gave his evidence." On the other hand he was "a thorough rogue and had done the same thing on previous occasions," and on his own admission he had a grudge against the appellant. And the result of the balance is that although he says "I believed the story of P.W.7 rogue though he undoubtedly was," he is not prepared to convict upon his evidence in the absence of corroboration and he proceeds, quite properly, to look for corroboration

We are therefore not dealing with one of those exceptional cases which were discussed in *Lim Yam Hong's*[1] case. We are dealing with the more usual type of case, where the evidence of the accomplice, though "impressive", was not so absolutely credible as to dispense with the necessity for corroboration. It is therefore necessary to consider the corroboration which the learned District Judge found.

The accomplice had said that on the evening of January 14th at about 6 p.m. the appellant and a man named Hussein (who was another accused) came to his house. This was the beginning of the negotiations. The accomplice's wife gave evidence that she saw the appellant and Hussein in the house about that time, and that the appellant and the accomplice were talking in Hindustani. T. B. Kassim, who is a brother-in-law of the accomplice's wife, was also called and said that about that time he saw the appellant coming away from the accomplice's house. T. B. Kassim is related to the accomplice, and it must be remembered that the issue of fact was whether the appellant had 'framed' a bogus charge of robbery against the accomplice or whether the accomplice had 'framed' the charge which was before the Court against the appellant. Nevertheless if upon a careful consideration of those facts and a thorough examination of Kassim's evidence the learned District Judge had decided to place absolute reliance on Kassim's evidence, that would in my view have been sufficient corroboration. It was slight but sufficient. It was "independent testimony which affected the accused by tending to connect him wih the crime" *Rex v. Baskerville*[2]. But Kassim's evidence was the only corroboration in the case, apart from the wife's the value of whose evidence as corroboration of her husband's was low. Therefore the importance of Kassim's evidence cannot be exaggerated. What impression did Kassim form upon the mind of the the learned District Judge who heard him? Was the learned District Judge so impressed with his credibility that he was prepared to accept his evidence after full consideration of the fact that he was a relative of the accomplice? These are questions to which the grounds of judgment afford no answer. But there is a third question. Did the learned District Judge appreciate the paramount importance of Kassim's evidence? To this question I think the only answer can be that he did not.

Having weighed the accomplice's evidence, the learned District Judge finds that it is corroborated by the evidence of the accomplice's wife and Kassim. He says "I did not attach great importance to their evidence, but kept an open mind about it. I am inclined to agree with Mr. Buttrose that that is a not very apt way of saying "I did not regard their evidence as conclusive as soon as I heard it, but was determined to wait until I had heard the whole of the evidence in the case." But it is clear that the learned District Judge mainly relied for corroboration, not on Kassim's evidence, but upon something which was not corroboration at all. He relied upon the report by the appellant of the bogus robbery and the fact that the accomplice, on hearing of the report, surrendered himself to the Police. The contention that the accomplice would not have surrendered himself to the Police when he heard of the report of the robbery charge if he had committed the robbery may be a good argument in support of the contention that he did not commit the robbery. But the fact that he surrendered to the Police is certainly not corroborative of the accomplice's evidence that the appellant committed the crime with which he was charged. Neither the fact that the appellant made a bogus charge of robbery against the accomplice (if that is the fact) nor the fact that the accomplice gave himself up to the Police can be said to be independent testimony which affected the appellant by tending to connect him with the crime of abetting the criminal breach of trust. And yet the learned District Judge makes it clear that this is what he mainly relied on as corroboration of the accomplice's story.

Mr. Buttrose has argued that although the learned District Judge mainly relied for corroboration upon something which was not corroboration, I should nevertheless dismiss the appeal because the evidence of Kassim affords the corroboration which is required. As I have said, Kassim's evidence in my opinion affords slender corroboration of the accomplice's story, which

would nevertheless be sufficient if it was conclusively believed. But because the learned District Judge failed to appreciate the importance of it, his grounds of judgment afford no indication that he gave to Kassim's evidence the careful consideration which its importance demanded, or that he reached any real conclusion upon it. His only reference to Kassim's evidence is in the following passage :—

> It is also corroborated as regards this matter by P.W. 10 (Kassim). Both P.W. 9 (the wife) and P.W. 10 identified the 2nd accused as the man who went to P.W. 7's house on 14/1/47. There are discrepancies in their evidence, but as the events took place six months previously I did not attach great importance to them, neither did I attach great importance to their evidence, but kept an open mind about it.

I am therefore left in this position :—

(1) Corroboration of the accomplice's evidence was required;

(2) The corroboration then became the determining factor in the case;

(3) Certain corroboration was afforded by the evidence of Kassim;

(4) The learned District Judge misdirected himself in relying upon other matters as affording corroboration;

(5) I am invited to say, from the passage in the judgment which I have quoted above, that the learned District Judge found Kassim's evidence to be conclusive.

The passage is quite insufficient to enable me to do so. It is clear that having misdirected himself in relying upon matters which did not afford corroboration, he did not adequately consider the only evidence which did.

The appeal must be allowed. The conviction and sentence are quashed, and the appellant must be discharged.

Appeal Allowed.
Conviction and Sentence Quashed.

TAN CHENG HONG v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) Jan. 23, 1948]
[Singapore — Magistrate's Appeal No. 126 of 1947]

Criminal Procedure — Statement to Police officer — Confession.

In this case the accused was charged with extortion. A letter of the usual type had been sent and after a report to the Police by the recipient, a detective was sent to the rendezvous. The detective gave evidence and said that the accused, a stranger, turned up and a conversation took place in the course of which the detective showed the accused the letter in question and asked "Is this yours?" "Was this letter sent by your people?". The Detective further said that the accused answered "Yes".

Held, that in this case the statement amounted to a confession and that evidence should have been excluded.

MAGISTRATE'S APPEAL.

A. P. Rajah for the Appellant.

Lim Koon Teck (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — In this case there was a charge of extortion.

A letter of the usual type was sent, and the recipient wisely reported to the police. A detective was sent to the rendezvous and the appellant, a stranger, arrived. There was a conversation in the course of which the detective showed the appellant the letter in question and asked "Is this yours?" "Was this this letter sent by your people?" The appellant answered 'yes".

Now it appears to me necessary to distinguish between what is a statement about extrinsic matters and what is part of the offence. That is to say, words which constitute an offence by themselves must be distinguished from words which raise the inference that the accused has committed other acts. In cases of this sort where the detective has conversation with a suspect it is sometimes difficult to make the distinction. But I think that the question was on the wrong side of the line. If, on the other hand, the appellant had uttered a threat to the detective it would have been an offence by itself and not a confession of an offence.

The appeal must be allowed.

Appeal Allowed.

PALANIAPPA CHITTY v. RAVENA MANA MAIYAMMAI ACHI (M.W.).

[C. A. (Murray-Aynsley, C.J., Singapore, Pretheroe, Ag. C.J., F. of M.; Brown, J.) March 1, 1948]
[Singapore — Civil Appeal No. 1 of 1948]

Rules of the Supreme Court, 1934, O. 47 r. 4 — Question of paying money into Court by trustees, executors or administrators.

In this case an interlocutory order was made upon an application under Order 47 rule 4 ordering the Defendant to deposit in Court to the credit of the action the sum of $40,212/- being two-thirds of the amount of $60,318/- which came into the hands of the administrator. The defendant appealed.

Held, (Murray-Aynsley, C.J., Singapore, dissenting), that money will not be ordered to be paid into Court by trustees, executors or administrators unless there are admissions that the money is actually in their hands and that it is not sufficient that the money has been in their hands.